

# The Vermont Statutes

## Title 6: Agriculture

### *Chapter 81: INSECTICIDES, FUNGICIDES AND RODENTICIDES*

#### § 911. Definitions

For the purpose of this chapter:

(1) "Active ingredient" means:

(A) In the case of an economic poison other than a plant regulator, defoliant, or desiccant, any ingredient which will prevent, destroy, or repel insects, nematodes, fungi, rodents, weeds, or other pests;

(B) In the case of plant regulators, any ingredient which will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of plants or the produce thereof;

(C) In the case of a defoliant, any ingredient which will cause the foliage to drop from a plant;

(D) In the case of a desiccant, any ingredient which will artificially accelerate the drying of plant tissue.

(2) "Adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(4) "Secretary" means the secretary of agriculture, food and markets.

(5) "Economic poison" means:

(A) Any substance produced, distributed, or used for preventing, destroying, or repelling any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the secretary shall declare to be a pest;

(B) Any substance produced, distributed, or used as a plant regulator, defoliant, or desiccant.

(6) "Fungi" means all nonchlorophyll-bearing thallophytes (that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeast, and bacteria, except those on or in living man or other animals.

(7) "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

(8) "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

(9) "Inert ingredient" means an ingredient which is not an active ingredient.

(10) "Ingredient statement" means:

(A) A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

(B) A statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison. However, if the preparation is highly toxic to man (determined as provided in section 913 of this title) subdivision (10)(A) of this section shall apply; or

(C) A statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic, to be made in addition to the statement required by subdivision (10)(A) or (B) of this section, in case the economic poison contains arsenic.

(11) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

(12) "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

(13) "Label" means the written, printed, or graphic matter on, or attached to, the economic poison, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison.

(14) "Labeling" means all labels and other written, printed, or graphic matter:

(A) Upon the economic poison or any of its containers or wrappers;

(B) Accompanying the economic poison at any time;

(C) To which reference is made on the label or in literature accompanying the economic poison, except when accurate, nonmisleading reference is made to current official publications of the United States Departments of Agriculture or Interior, the United States Public Health service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of economic poisons.

(15) "Misbranded" shall apply:

(A) To any economic poison if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients that is false or misleading in any particular;

(B) To any economic poison;

(i) if it is an imitation of or is offered for sale under the name of another economic poison;

(ii) if its labeling does not bear a United States Environmental Protection Agency registration number or a valid registration number issued by the secretary under this chapter;

(iii) if the labeling accompanying it does not contain instructions for use that are necessary and, if complied with, adequate for the protection of the public;

(iv) if the label does not contain a warning or caution statement that may be necessary and, if complied with, adequate to prevent injury to living man and the total environment;

(v) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statements on the immediate container cannot be clearly read, of the retail package which is presented or displayed under the customary conditions of purchase;

(vi) if any word, statement, or other information required by or under the authority of this chapter to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(vii) if in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied; or

(viii) if in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals or vegetation to which it is applied. Provided, that physical or physiological effects on plants or parts thereof shall not be considered to be injurious when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

(16) "Person" means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

(17) "Registrant" means the person registering any economic poison pursuant to the provisions of this chapter.

(18) "Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the secretary shall declare to be a pest.

(19) "Weed" means any plant which grows where not wanted.

(20) "Nematocide" means any substance produced, distributed, or used for preventing, destroying, or repelling nematodes.

(21) "Plant regulator" means any substance produced, distributed, or used for the purposes of accelerating or retarding the rate of growth or rate of maturation, or otherwise altering the behavior of plants but shall not include substances produced, distributed, or used for plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(22) "Defoliant" means any substance produced, distributed, or used for causing the foliage to drop from a plant, with or without causing abscission.

(23) "Desiccant" means any substance produced, distributed, or used for artificially accelerating the drying of plant tissues.

(24) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform or saclike bodies covered with cuticle, and inhabiting soil water, plants, or plant parts; may also be called nemas or eelworms. (Amended 1961, No. 74, §§ 1-4, eff. April 19, 1961; 1975, No. 42, § 1; 1981, No. 117 (Adj. Sess.); 2003, No. 42, § 2, eff. May 27, 2003.)

## **§ 912. Administration**

Jurisdiction in all matters pertaining to the distribution, sale, and transportation of economic poisons, is by this chapter vested exclusively in the secretary. (Amended 2003, No. 42, § 2, eff. May 27, 2003.)

## **§ 913. Powers of secretary**

The secretary may, after opportunity for a hearing:

(1) Declare as a pest any form of plant or animal life or virus which is injurious to plants, men, domestic animals, articles, or substances;

(2) Determine whether economic poisons are highly toxic to man; and

(3) Determine standards of coloring or discoloring for economic poisons, and subject economic poisons to the requirements of subdivision 919(4) of this title. (Amended 2003, No. 42, § 2, eff. May 27, 2003.)

#### **§ 914. Delegation of duties**

All authority vested in the secretary by virtue of the provisions of this chapter may with like force and effect be executed by such employees of the agency of agriculture, food and markets as the secretary may from time to time designate for such purpose. (Amended 1989, No. 256 (Adj. Sess.), § 10(a), eff. Jan. 1, 1991; 2003, No. 42, § 2, eff. May 27, 2003.)

#### **§ 915. Regulations**

The secretary, after due public hearing, may make appropriate rules and regulations for carrying out the provisions of this chapter, including rules and regulations providing for the collection and examination of samples of economic poisons. (Amended 2003, No. 42, § 2, eff. May 27, 2003.)

#### **§ 916. Cooperation with state and federal agencies**

The secretary is authorized and empowered to cooperate with, and enter into agreements with, any other agency of this state, the United States Department of Agriculture or environmental protection agency, and any other state or agency thereof for the purpose of carrying out the provisions of this chapter and securing uniformity of regulations. (Amended 1975, No. 42, § 2; 2003, No. 42, § 2, eff. May 27, 2003.)

#### **§ 917. Uniformity between state and federal regulations**

In order to avoid confusion, endangering the public health, resulting from diverse requirements, particularly as to the labeling and coloring of economic poisons, and to avoid increased costs to the people of this state due to the necessity of complying with such diverse requirements in the manufacture and sale of such poisons, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to such poisons. To this end the secretary is authorized to adopt rules, applicable to and in conformity with the primary standards established by this chapter, as have been or may be prescribed by the United States environmental protection agency with respect to economic poisons. (Amended 1975, No. 42, § 3; 2003, No. 42, § 2, eff. May 27, 2003.)

#### **§ 918. Registration**

(a) Every economic poison which is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered in the office of the secretary, and such registration shall be renewed annually; provided, that products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels shall be added

by supplement statements during the current period of registration. It is further provided that any economic poison imported into this state, which is subject to the provisions of any federal act providing for the registration of economic poisons and which has been duly registered under the provisions of this chapter, may, in the di

cretion of the secretary, be exempted from registration under this chapter, when sold or distributed in the unbroken immediate container in which it was originally shipped. The registrant shall file with the secretary a statement including:

(1) the name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;

(2) the name of the economic poison;

(3) a complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it, including directions for use; and

(4) if requested by the secretary, a full description of the tests made and the results thereof upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the economic poison was registered or last re-registered.

(b) The registrant shall pay an annual fee of \$100.00 for each product registered, and that amount shall be deposited in the special fund created in section 929 of this title, of which \$5.00 from each product registration shall be used for an educational program related to the proper purchase, application, and disposal of household pesticides, and \$5.00 from each product registration shall be used to collect and dispose of obsolete and unwanted pesticides. The annual registration year shall be from December 1 to November 30 of the following year.

(c) The secretary, whenever he or she deems it necessary in the administration of this chapter, may require the submission of the complete formula of any economic poison. If it appears to the secretary that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of sections 919 and 920 of this title, he or she shall register the article.

(d) If it does not appear to the secretary that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this chapter, he or she shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fail to comply with the chapter so as to afford the registrant an opportunity to make the necessary corrections. In order to protect the public, the secretary, on his or her own motion, may, at any time, cancel the registration of an economic poison which fails to meet the requirements of this section. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under sections 919 and 920 of this title.

(e) Notwithstanding any other provision of this chapter, registration is not required in the case of an economic poison shipped from one plant within this state to another plant within this state operated by the same person. (Amended 1961, No. 74, § 5, eff. April 19, 1961; 1965, No. 90, §§ 1, 2; 1975, No. 39, § 1, eff. Dec. 1, 1975; 1985, No. 72, § 2, eff. May 20, 1985; 1987, No. 71, § 1; amended 1995, No. 125 (Adj. Sess.), § 1; 1999, No. 49, § 115; 1999, No. 141 (Adj. Sess.), § 2; 2003, No. 42, § 2, eff. May 27, 2003; 2005, No. 72, § 21; 2009, No. 134 (Adj. Sess.), § 11.)

### **§ 919. Prohibited distribution; sale or transportation**

It shall be unlawful for any person to distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

(1) Any economic poison which has not been registered pursuant to the provisions of section 918 of this title, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration; provided, that in the discretion of the secretary, a change in the labeling or formula of an economic poison may be made within a registration period without requiring registration of the product;

(2) Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing:

(A) the name and address of the manufacturer, registrant, or person for whom manufactured;

(B) the name, brand, or trademark under which the article is sold; and

(C) the net weight or measure of the content subject, however, to such reasonable variations as the secretary may permit;

(3) Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in section 913 of this title, unless the label shall bear, in addition to any other matter required by this chapter:

(A) the skull and crossbones;

(B) the word "poison" prominently, in red, on a background of distinctly contrasting color; and

(C) a statement of an antidote for the economic poison;

(4) The economic poisons commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate, unless they have been distinctly colored or discolored as

provided by regulations issued in accordance with this chapter, or any other white powder economic poison which the secretary, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored; provided, that the secretary may exempt any economic poison, to the extent that it is intended for a particular use or uses, from the coloring or discoloring required or authorized by this section, if he determines that such coloring or discoloring for such use or uses is not necessary for the

protection of the public health;

(5) Any economic poison which is adulterated or misbranded. (Amended 2003, No. 42, § 2, eff. May 27, 2003.)

### **§ 920. Other prohibitions**

(a) It shall be unlawful for any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or regulations promulgated hereunder, or to add any substance to, or take any substance from, an economic poison in a manner that may defeat the purpose of this chapter.

(b) It shall be unlawful for any person to use for his or her own advantage or to reveal, other than to the secretary or proper officials or employees of the state or to the courts of this state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 918 of this title. (Amended 2003, No. 42, § 2, eff. May 27, 2003.)

### **§ 921. Seizure and condemnation**

Any economic poison that is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be liable to be proceeded against in any superior court of the state where it may be found and seized for confiscation by process of libel for condemnation:

(1) If it is adulterated or misbranded;

(2) If it has not been registered under the provisions of section 918 of this title;

(3) If it fails to bear on its label the information required by this chapter;

(4) If it is a white powder economic poison and is not colored as required under this chapter. (Amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974.)

### **§ 922. Disposition after condemnation**



If the article is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court may direct and the proceeds, if such article is sold, less legal costs, shall be paid to the state treasurer; provided, that the article shall not be sold contrary to the provisions of this chapter; and provided, further, that upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the article shall not be disposed of unlawfully, the court may direct that the article be delivered to the owner thereof for relabeling or reprocessing as the case may be. When a decree of condemnation is entered against the article, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article.

### **§ 923. Procedure for prosecuting violations**

The examination of economic poisons shall be made under the direction of the secretary for the purpose of determining whether they comply with the requirements of this chapter. If it shall appear from such examination that an economic poison fails to comply with the provisions of this chapter, and the secretary contemplates instituting criminal proceedings against any person, the secretary shall cause appropriate notice to be given to such person. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings and if thereafter in the opinion of the secretary it shall appear that the provisions of the chapter have been violated by such person, then the secretary shall refer the facts to the state's attorney for the county in which the violation shall have occurred with a copy of the results of the analysis or the examination of such article. However, nothing in this chapter shall be construed as req

uiring the secretary to report for prosecution or for the institution of libel proceedings minor violations of the chapter whenever he believes that the public interests will be best served by a suitable notice of warning in writing. (Amended 2003, No. 42, § 2, May 27, 2003.)

### **§ 924. Duty of state's attorney**

It shall be the duty of each state's attorney to whom any such violation is reported to cause appropriate proceedings to be instituted and prosecuted in the superior court without delay. (Amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974.)

§ 925. Repealed. 2009, No. 33, § **83(c)(4)**.

### **§ 926. Penalties**

(a) Any person violating subdivision 919(1) of this title shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$100.00.

(b) Any person violating any provision of this chapter other than subdivision 919(1) of this title, shall be guilty of a misdemeanor and upon a conviction shall be fined not more than \$100.00 for the first offense and upon conviction for a subsequent offense shall be fined not more than \$200.00; provided, that any offense committed more than five years after a previous conviction shall be considered a first offense; and provided further, that in any case where a registrant was

issued a warning by the secretary pursuant to the provisions of this chapter, such registrant shall, upon conviction of a violation of any provision of this chapter other than subdivision 919(1) of this title, be fined not more than \$200.00, or imprisoned for not more than one year, or be subject to both such fine and imprisonment; and the registration of the article with reference to which the violation occurred shall terminate automatically. An article, the registration of which has been terminated, may not

again be registered unless the article, its labeling, and other material required to be submitted appear to the secretary to comply with all the requirements of this chapter.

(c) Notwithstanding any other provisions of this section, in case any person, with intent to defraud, uses or reveals information relative to formulas of products acquired under authority of section 918 of this title, he or she shall be fined not more than \$200.00 or imprisoned for not more than one year, or both. (Amended 2003, No. 42, § 2, May 27, 2003.)

### **§ 927. Exceptions from penalties**

The penalties provided for violations of section 919 of this title shall not apply to:

(1) Any carrier while lawfully engaged in transporting an economic poison within this state, if such carrier shall, upon request, permit the secretary or his or her designated agent to copy all records showing the transactions in and movement of the articles;

(2) Public officials of this state and the federal government engaged in the performance of their official duties;

(3) The manufacturer or shipper of an economic poison for experimental use only:

(A) by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of economic poisons; or

(B) by others if the economic poison is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only-Not to be sold," together with the manufacturer's name and address. However, if a written permit has been obtained from the secretary, economic poisons may be sold for experiment purposes subject to such restrictions and conditions as may be set forth in the permit. (Amended 2003, No. 42, § 2, May 27, 2003.)

### **§ 928. Foreign exports**

Articles shall not be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter shall apply.

### **§ 929. Revolving fund**

(a) There is hereby created a special pesticide monitoring revolving fund. Monies collected pursuant to subsection 918(b) of this title shall be deposited in the fund. The secretary may use monies deposited in the fund for the following purposes:

(1) For the purpose of monitoring pesticides, conducting pesticide educational activities, researching alternatives to the use of pesticides for pest control, and implementing pesticide reduction strategies pursuant to the provisions of section 1110 of this title.

(2) To pay salaries of full and part-time employees involved in monitoring pesticides.

(3) To purchase necessary pesticide monitoring and analytical equipment.

(4) To defray the cost of necessary operating expenses.

(5) To contract with other public or private entities in order to implement portions of this plan or to conduct any special studies necessary to ascertain the impact of pesticides on the environment.

(6) To defray the costs of a collection program for obsolete and unwanted pesticides.

(7) To implement and administer the provisions of this title and any other provisions of law relating to pesticides.

(b) [Repealed.] (Added 1985, No. 72, § 3, eff. May 20, 1985; amended 1987, No. 71, § 2; 1995, No. 125 (Adj. Sess.), § 2; 1999, No. 49, § 116(1); 2003, No. 42, § 2, May 27, 2003; 2005, No. 72, § 22.)

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